MONTANA LEGISLATIVE HISTORY

Chapter 511 1981

Bill H _____ S 253 Original bill & history ✓C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	3/20	C	Hearing Date(s)	2/16	C
	3/27	C		2/20	C
		C			C
		C			C
Date Out		C	Free Conference Committee 4/13 — no minutes		

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

TRANSMITTED TO HOUSE: 2/16
REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY: 2/17
HEARING: 3/4
REPORT: 3/4, BE CONCURRED IN
2ND READING: 3/7 YEAS: 31; NAYS: 58
BE NOT CONCURRED IN MOTION: 3/7 YEAS: 64; NAYS: 25
BILL KILLED ON 2ND READING: 3/7

SB 25[illegible] -- TOWE, REGAN, NORMAN, ET AL -- PROTECTING EMPLOYEES AND COMMUNITIES FROM LARGE SCALE LAYOFFS AND CREATING A BOARD OF ECONOMIC RE-ADJUSTMENTS.
INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS AND INDUSTRY: 1/23
HEARING: 2/16
REPORT: 2/20, ADVERSE REPORT ADOPTED -- YEAS: 33; NAYS: 16
-- KILLED

SB 251 -- TVEIT, OCHSNER, LEE, ET AL -- AMENDING 75-10-214 TO ALLOW CERTAIN CONTROLLED BURNING FOR TRAINING FIREFIGHTERS.
INTRODUCED AND REFERRED TO COMMITTEE ON PUBLIC HEALTH: 1/23
HEARING: 2/2
REPORT: 2/10, DO NOT PASS -- YEAS: 37; NAYS: 6 -- KILLED

SB 252 -- GOODOVER, FABREGA, NORDTVEDT -- ESTABLISHING A NEW CLASSIFICATION FOR PROPERTY TAX FOR AUTOMOBILES AND LIGHT TRUCKS.
FISCAL NOTE: REQUIRED
INTRODUCED AND REFERRED TO COMMITTEE ON TAXATION: 1/23
HEARING: 2/6
REPORT: 3/27, DO PASS AS AMENDED
2ND READING: 4/1, YEAS: 34; NAYS: 13
3RD READING; 4/3, YEAS: 39; NAYS: 9

TRANSMITTED TO HOUSE: 4/3
REFERRED TO COMMITTEE ON TAXATION: 4/4
HEARING: 4/7
DIED

SB 253 -- REGAN, TURNAGE -- TO AMEND THE LAWS RELATING TO CHILD ABUSE AND NEGLECT AND PROTECTIVE SERVICES...
INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY: 1/23
HEARING: 2/16
REPORT: 2/20, DO PASS AS AMENDED
2ND READING: 2/23, DO PASS AS AMENDED
3RD READING: 2/25, YEAS: 49; NAYS: 0

TRANSMITTED TO HOUSE: 2/25
REFERRED TO COMMITTEE ON JUDICIARY: 3/2
HEARING: 3/20
REPORT: 3/27, BE CONCURRED IN, AS AMENDED
2ND READING: 3/31, YEAS: 85; NAYS: 3
ON MOTION, 3/31, RULES SUSPENDED, PLACED ON 3RD READING.
3RD READING: 3/31, YEAS: 88; NAYS: 6

RETURNED TO SENATE WITH AMENDMENTS: 3/31
2ND READING: 4/3, BE NOT CONCURRED
ON MOTION, 4/7, FREE CONFERENCE COMMITTEE APPOINTED

FREE CONFERENCE COMMITTEE REPORT NO. 1: 4/13
SENATE
2ND READING: 4/15, BE CONCURRED IN

3RD READING: 4/16, YEAS: 44; NAYS: 0
HOUSE
2ND READING: 4/17, YEAS: 86; NAYS: 0
ON MOTION, 4/17, RULES SUSPENDED, PLACED ON 3RD READING
3RD READING: 4/17, YEAS: 92; NAYS: 1

TRANSMITTED TO GOVERNOR: 4/22/81
ACTION: 4/24, SIGNED
CHAPTER 511

SB 254 -- DOVER, ROTH, HAFFERMAN, ET AL -- GRANTING CONSENT FOR THE INTERBASIN AND INTERSTATE TRANSFER OF CERTAIN WATERS OF THE YELLOWSTONE RIVER.
INTRODUCED AND REFERRED TO COMMITTEE ON AGRICULTURE: 1/23
HEARING: 2/9
REPORT: 2/17, ADVERSE REPORT ADOPTED -- YEAS: 37; NAYS: 10
-- KILLED

SB 255 -- TURNAGE, GALT, HAMMOND, ET AL -- ELIMINATING CERTAIN TAXES FOR LINEAL DESCENDANTS.
FISCAL NOTE: REQUIRED
INTRODUCED AND REFERRED TO COMMITTEE ON TAXATION: 1/23
HEARING: 2/5
REPORT: 2/12, DO PASS AS AMENDED
2ND READING: 2/14, DO PASS
3RD READING: 2/17, YEAS: 50

TRANSMITTED TO HOUSE: 2/17
REFERRED TO COMMITTEE ON TAXATION: 2/18
HEARING: 3/17
REPORT: 3/17, BE CONCURRED IN
ON MOTION, 3/19, PASSED FOR THE DAY.
2ND READING: 3/20, AS AMENDED -- YEAS: 79; NAYS: 6
3RD READING: 3/23, YEAS: 93; NAYS: 6

RETURNED TO SENATE WITH AMENDMENTS: 3/23
2ND READING: 3/24, BE CONCURRED IN
3RD READING: 3/25, YEAS: 50

TRANSMITTED TO GOVERNOR: 3/26/81
ACTION: 3/31, SIGNED
CHAPTER 202

SB 256 -- HAMMOND, STOBART -- AMENDING 7-2-4103 TO CHANGE THE POPULATION PREREQUISITE FOR MUNICIPAL INCORPORATION.
INTRODUCED AND REFERRED TO COMMITTEE ON LOCAL GOVERNMENT: 1/23
HEARING: 2/5
REPORT: 2/7, DO PASS AS AMENDED
2ND READING: 2/11, DO PASS
3RD READING: 2/13, YEAS: 50

TRANSMITTED TO HOUSE: 2/13
REFERRED TO COMMITTEE ON LOCAL GOVERNMENT: 2/14
HEARING: 3/7
REPORT: 3/14, BE CONCURRED IN, AS AMENDED
2ND READING: 3/19, YEAS: 91; NAYS: 1
3RD READING: 3/21, YEAS: 89; NAYS: 2

RETURNED TO SENATE WITH AMENDMENTS: 3/21
2ND READING: 3/24, BE CONCURRED IN

SENATE BILL NO. 253

INTRODUCED BY REGAN, TURNAGE

BY REQUEST OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

IN THE SENATE

January 23, 1981	Introduced and referred to Committee on Judiciary.
February 20, 1981	Committee recommend bill do pass as amended. Report adopted.
February 21, 1981	Bill printed and placed on members' desks.
February 23, 1981	Second reading, do pass as amended.
February 24, 1981	Correctly engrossed.
February 25, 1981	Third reading, passed. Ayes, 49; Noes, 0. Transmitted to House.

IN THE HOUSE

March 2, 1981	Introduced and referred to Committee on Judiciary.
March 28, 1981	Committee recommend bill be concurred in as amended. Report adopted.
March 30, 1981	On motion rules suspended and bill allowed to be transmitted on 71st legislative day. Motion adopted.
March 31, 1981	Second reading, concurred in.
	On motion rules suspended and bill placed on third reading this day.
	Third reading, concurred in as amended. Ayes, 88; Noes, 6.

IN THE SENATE

April 1, 1981	Returned from House with amendments.
April 3, 1981	Second reading, amendments not concurred in.
April 7, 1981	On motion Free Conference Committee requested. Free Conference Committee appointed.
April 13, 1981	Free Conference Committee reported and dissolved.
April 15, 1981	Second reading, Free Conference Committee report adopted.
April 16, 1981	Third reading, Free Conference Committee report adopted. Ayes, 44; Noes, 0. Transmitted to House.

IN THE HOUSE

April 20, 1981	Free Conference Committee report adopted.

IN THE SENATE

April 20, 1981	Returned from Senate. Sent to enrolling. Reported correctly enrolled.

SENATE BILL NO. 253

INTRODUCED BY _____

BY REQUEST OF

THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE LAWS RELATING TO CHILD ABUSE AND NEGLECT AND PROTECTIVE SERVICES BY PROVIDING EXPANDED DEFINITIONS AND ADDING DIRECTIVES REGARDING THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES' RESPONSIBILITY FOR CHILD WELFARE SERVICES; AMENDING SECTIONS 41-3-102, 41-3-201, 41-3-401, AND 53-2-201, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 53-2-201, MCA, is amended to read:

"53-2-201. Powers and duties of department. (1) The department shall:

(a) administer or supervise all forms of public assistance, child protection, and child welfare, including the provision of medical care payments in behalf of recipients of public assistance;

(b) administer or supervise all child welfare activities, including:

(i) importation and exportation of children;

(ii) licensing ~~and supervising of private and local child caring agencies~~ of all children's foster family homes, group homes, child-care agencies and child-placing agencies;

(iii) the care of dependent, and neglected, ~~and delinquent~~ children in ~~foster family homes, especially~~ substitute care placement and children ~~placed~~ who are free for adoption ~~or those of illegitimate birth~~; and

(iv) the maintenance of supplemental day care for children;

(c) give consultant service to private institutions providing care for the needy, indigent, handicapped, or dependent adults;

(d) cooperate with other state agencies and develop provisions for services to the blind, including the prevention of blindness, the location of blind persons, medical services for eye conditions, and vocational guidance and training of the blind;

(e) provide services in respect to organization and supervise county departments of public welfare and county boards of public welfare in the administation of public assistance functions and for efficiency and economy;

(f) assist and cooperate with other state and federal departments, bureaus, agencies, and institutions, when so requested, by performing services in conformity with public assistance purposes;

(g) administer all state and federal funds allocated

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to the department for public assistance and do all things necessary, in conformity with federal and state law, for the proper fulfillment of public assistance purposes; and

(h) make rules governing payment for services and supplies provided to recipients of public assistance.

(2) The department may:

(a) purchase, exchange, condemn, or receive by gift either real or personal property which is necessary to carry out its public assistance functions. Title to property obtained under this subsection shall be taken in the name of the state of Montana for the use and benefit of the department.

(b) contract with the federal government to carry out its public assistance functions. The department may do all things necessary in order to avail itself of federal aid and assistance.

(c) make rules, consistent with state and federal law, establishing the amount, scope, and duration of services to be provided to recipients of public assistance."

Section 2. Section 41-3-102, MCA, is amended to read:

"41-3-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Child" or "youth" means any person under 18 years of age.

(2) An "abused or neglected child" means a child whose

normal physical or mental health or welfare is harmed or threatened with harm by the acts or omissions of his parent or other person responsible for his welfare.

(3) "harm to a child's health or welfare" means the harm that occurs whenever the parent or other person responsible for the child's welfare:

(a) inflicts or allows to be inflicted upon the child physical or mental injury, including injuries sustained as a result of excessive corporal punishment;

(b) commits or allows to be committed a sexual assault against the child or exploits the child or allows the child to be exploited for sexual purposes; as provided in subsection (1) of 45-5-625;

(c) causes failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or health care, though financially able to do so or offered financial or other reasonable means to do so; or

(d) abandons the child by ~~leaving him under circumstances that make reasonable the belief that the parent or other person does not intend to resume care of the child in the future~~; willfully surrendering physical custody for a period of 6 months and during that period does not manifest to the child and the person having physical custody of the child a firm intention to resume physical custody or

to make permanent legal arrangements for the care of the child; or

(e) is unknown and has been unknown for a period of 90 days and reasonable efforts to identify and locate the parents have failed.

(4) "Adequate health care" means any medical or nonmedical remedial health care permitted or authorized under state law.

(5) "Threatened harm" means imminent risk of harm.

(6) "A person responsible for a child's welfare" means the child's parent, guardian, or foster parent; an employee of a public or private residential institution, facility, home, or agency; or any other person legally responsible for the child's welfare in a residential setting.

(7) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily organ or function.

(8) "Mental injury" means an identifiable and substantial impairment of the child's intellectual or psychological functioning.

(9) "Dependent youth" means a youth:

(a) who is abandoned;

(b) who is without parents or guardian or not under the care and supervision of a suitable adult;

(c) who has no proper guidance to provide for his

necessary physical, moral, and emotional well-being;

(d) who is destitute;

(e) who is dependent upon the public for support; or

(f) whose parent or parents have voluntarily relinquished custody of the child and whose legal custody has been transferred to a licensed agency.

(10) "Youth in need of care" means a youth who is dependent, abused, or neglected as defined in this section.

(11) "Supervision" means the authority granted by a youth court or by a voluntary agreement of a parent to determine the foster care placement of a child and the length of stay of a child in foster care and provide for the needs of a child under subsection (1) of 41-3-104.

(12) "Department" means the department of social and rehabilitation services provided for in 2-15-2201."

Section 3. Section 41-3-201, MCA, is amended to read:

"41-3-201. Reports. (1) When the professionals and officials listed in subsection (2) know or have reasonable cause to suspect that a child known to them in their professional or official capacity is an abused or neglected child, they shall report the matter promptly to the department of social and rehabilitation services or its local affiliate, which then shall notify the county attorney of the county where the child resides.

(2) Professionals and officials required to report

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are:

(a) physician, resident, intern, or member of a hospital's staff engaged in the admission, examination, care, or treatment of persons;

(b) a nurse, osteopath, chiropractor, podiatrist, medical examiner, coroner, dentist, optometrist, or any other health or mental health professional;

(c) Christian Science practitioner and religious healers;

(d) school teachers, other school officials, and employees who work during regular school hours;

(e) a social worker, operator or employee of any registered or licensed day-care ~~center~~ or substitute care facility, or any other ~~licensed~~ operator or employee of a child-care facility;

(f) foster care, residential, or institutional worker; or

(g) a peace officer or other law enforcement official.

(3) Any person may make a report under this section if he knows or has reasonable cause to suspect that a child is abused or neglected.

(4) No person listed in subsection (2) may refuse to make a report as required in this section on the grounds of a physician-patient or similar privilege if the person came into possession of such information as a result of his

treatment of the child.

(5) The reports referred to under this section shall contain:

(a) the names and addresses of the child and his or her parents or other persons responsible for his or her care;

(b) to the extent known, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries;

(c) any other information that the maker of the report believes might be helpful in establishing the cause of the injuries or showing the willful neglect and the identity of person or persons responsible therefor; and

(d) the facts which led the person reporting to believe that the child has suffered injury or injuries or willful neglect, within the meaning of this chapter."

Section 4. Section 41-3-401, MCA, is amended to read:

"41-3-401. Abuse, neglect, and dependency petitions. (1) The county attorney shall be responsible for filing all petitions alleging abuse, neglect, or dependency. He may require all state, county, and municipal agencies, including law enforcement agencies, to conduct such investigations and furnish such reports as may be necessary. Investigations as to financial status may not be made prior to the adjudicatory hearing provided for in 41-3-404.

(2) Upon receipt of a petition, the court shall set a date for an adjudicatory hearing on the petition. Such petitions shall be given preference by the court in setting hearing dates.

(3) A petition alleging abuse, neglect, or dependency is a civil action brought in the name of the state of Montana. The rules of civil procedure shall apply except as herein modified. Proceedings under a petition are not a bar to criminal prosecution.

(4) The parents or parent, guardian, or other person or agency having legal custody of the youth named in the petition, if residing in the state, shall be served personally with a copy of the petition and summons at least 5 days prior to the date set for hearing. If such person or agency resides out of state or is not found within the state, the rules of civil procedure relating to service of process in such cases shall apply.

(5) In the event service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall appoint an attorney to represent the unavailable party where in the opinion of the court the interests of justice require.

(6) If a parent of the child is a minor, notice shall be given to the minor parent's parents or guardian, and if there is no guardian the court shall appoint one.

(7) Any person interested in any cause under this chapter has the right to appear.

(8) Except where the proceeding is instituted or commenced by a representative of the department of social and rehabilitation services, a citation shall be issued and served upon a representative of the department prior to the court hearing.

(9) The petition shall:

(a) state the nature of the alleged abuse, neglect, or dependency;

(b) state the full name, age, and address of the youth and the name and address of his parents or guardian or person having legal custody of the youth;

(c) state the names, addresses, and relationship to the youth of all persons who are necessary parties to the action.

(10) The petition may ask for the following relief:

(a) temporary investigative authority and protective services;

(b) temporary legal custody;

~~(c)--limited-legal-custody;~~

~~(d)~~(c) permanent legal custody, including the right to consent to adoption;

~~(e)~~(d) appointment of guardian ad litem;

~~(f)~~(e) any combination of the above or such other

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relief as may be required for the best interest of the youth.

(11) The petition may be modified for different relief at any time within the discretion of the court.

(12) The court may at any time on its own motion or the motion of any party appoint a guardian ad litem for the youth or counsel for any indigent party.

(13) This section does not apply to a petition for temporary investigative authority and protective services."

-End-

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 16, 1981

The twenty-ninth meeting of the Senate Judiciary Committee was called to order by Jesse O'Hara, Vice Chairman, on the above date in Room 331, at 10:00 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF SENATE BILL 246:

REQUIRING REPLACEMENT VALUE OF A MOTOR VEHICLE TO BE THE MEASURE OF DAMAGES.

Senator Story presented the bill and said that it addresses the situation in which a vehicle is totaled. Under this bill, total compensation would have to be made, even if the vehicle were worth more in value than current book price.

Senator Mazurek asked for a more precise definition of "replacement value" in the case of an immaculately preserved older car. Senator Story replied that it only meant something that is as good as what they had before -- not necessarily a new vehicle.

CONSIDERATION OF SENATE BILL 253:

TO AMEND THE LAWS RELATING TO CHILD ABUSE/NEGLECT AND PROTECTIVE SERVICES.

Senator Regan introduced the bill at the request of the Social and Rehabilitation Services. She stated that the major change from current law could be seen in subsection (d) on page 4, and that the changes therein would conform statute with case law.

Burt Annin, of the S.R.S. confirmed that the major change is the definition of abandonment, and offered a written amendment with the sponsor's approval (marked Exhibit A and attached to these minutes). He also left an explanatory sheet (marked Exhibit B and attached to these minutes).

Senator Mazurek expressed a concern that this bill might make it too easy to terminate the parents' rights. Mr. Annin responded that it would be no easier than it is now.

ROLL CALL

JUDICIARY COMMITTEE

47th LEGISLATIVE SESSION - - 1981 Date 2/16/81

NAME	PRESENT	ABSENT	EXCUSED
~~Anderson, Mike, Chr. (R)~~	✓		
O'Hara, Jesse A. (R)	✓		
Olson, S. A. (R)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Tveit, Larry J. (R)	✓		
Brown, Steve (D)	✓		
Berg, Harry K. (D)	✓		
Mazurek, Joseph P. (D)	✓		
Halligan, Michael (D)	✓		

Each day attach to minutes.

DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

TED SCHWINDEN, GOVERNOR

STATE OF MONTANA

P.O. BOX 4210

HELENA, MONTANA 59604

Amendments proposed by the department of social and rehabilitation services before the Senate Judiciary Committee on February 16, 1981 in its consideration of SB253.

Page 10, line 21:

(c) ~~limited legal custody~~ termination of the parent-child legal relationship;

REDESIGNATE PARAGRAPHS (d), (e), and (f) as currently codified

ADD:

Section 4.

41-3-302. Responsibility of providing protective services. (1) The department of social and rehabilitation services and the county welfare department shall have the primary responsibility to provide the protective services authorized by this chapter and shll have the authority pursuant to this chapter to take temporary, ~~limited,~~ or permanent custody of a child when order to do so by the court, including the right to give consent to adoption.

DEPARTMENT OF
SOCIAL AND REHABILITATION SERVICES

TED SCHWINDEN, GOVERNOR

P.O. BOX 4210

STATE OF MONTANA

HELENA, MONTANA 59604

By law the department of social and rehabilitation services and the county welfare departments have primary responsibility to provide the protective services authorized by chapter 3 of title 41 of the M.C.A. The department requests certain amendments to that chapter in order to more fully meet that responsibility. We additionally ask for clarification of the duties and responsibilities enmumerated in section 53-2-201.

At line 25 of page one and continuing on page two language has been substituted to be consistent with currently provided services and administered programs.

At line 12 on page 4 the definition of"exploitation for sexual purposes" is clarified by reference to the criminal code definition fount at 45-5-625, MCA.

At line 22 on page 4 the definition of"abandons" is changed by substituting language containing those conditions which "make reasonable the belief that the parent does not intend to resuem care of the child" as the law now reads. Surrending custody of a child for six months without an intention to resume care of or to make legal arrangements for the care of the child is when the belief that the child is abandoned is "reasonable" under the proposed amendment. Or, when no parent can be located and efforts to locate the parents have been unsuccessful for ninety days the belief that a child is abandoned becomes "reasonable".

The definitions added at lines 9 and 14 on page 6 are "housekeeping" definitions. The changes suggested in the reporting requirement at line 12 on page 7 simply adds terminology currently used regarding "child care facilities".

On page 10 at line 21 the department asks that the reference to limited legal custody by omitted. Custody is appropriately limited when custody is granted to the department on a termporary order. Any limited custody is temporary custody and the reference is not needed. With the sponsors permission the department would add an amendment as follows: (c) termination of the parent-child legal relationship; Petitions asking for permanent custody of youths in need of care ask for termination of the parental rights. A statutory reference will simply sanction that form of relief.

Another amendment the department requests with the sponsor's permission is one necessary for consistency with the removal of the refernce to limited legal custody. Section 41-3-302 grants the department authority to take temporary, limited or permanent custody of a child. We would omit the reference to"limited" in that section.

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 20, 1981

The thirty-third meeting of the Senate Judiciary Committee was called to order by Jess O'Hara, Vice Chairman, on the above date in Room 331, at 10:00 a.m.

ROLL CALL:

All members were present.

DISPOSITION OF SENATE BILL 272:

Senator Mazurek moved that the bill be amended according to the attached Committee Report. His motion carried unanimously. He then moved that the bill DO PASS AS AMENDED, and this motion carried unanimously.

DISPOSITION OF SENATE BILL 246:

Senator Mazurek moved to amend the bill as shown on the attached Committee Report, and his motion carried unanimously. Senator Olson moved that the bill DO PASS AS AMENDED, and this motion carried unanimously.

DISPOSITION OF SENATE BILL 253:

Senator Mazurek moved that the bill be amended as shown on the attached Committee Report. His motion carried over Senator Olson's opposition. Senator Berg moved that the bill DO PASS AS AMENDED, and this motion carried with Senator Olson opposing.

DISPOSITION OF SENATE BILL 240:

David Niss outlined the areas of the bill in which he felt there were problems and conflicts. Following discussion on the points he raised, Senator Olson moved that the bill receive a DO PASS AS AMENDED, with David doing the amending. Senator Anderson made a substitute motion that the bill do pass as amended, with David Niss working with Senators Mazurek and Anderson on the amendments. This motion passed unanimously. Senator Berg then moved that this action be reconsidered in order to consider the two amendments presented by the State Insurance Department. His motion passed unanimously. Senator Berg moved adoption of the two amendments, and this motion passed unanimously. Senator Olson then moved that the bill do pass as amended, and his motion passed over Senator Mazurek's objection.

ROLL CALL

JUDICIARY COMMITTEE

47th LEGISLATIVE SESSION - - 1981 Date Feb. 20, 1981

NAME	PRESENT	ABSENT	EXCUSED
~~Anderson, Mike, Chr. (R)~~	✓		
O'Hara, Jesse A. (R)	✓		
Olson, S. A. (R)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Tveit, Larry J. (R)	✓		
Brown, Steve (D)	✓		
Berg, Harry K. (D)	✓		
Mazurek, Joseph P. (D)	✓		
Halligan, Michael (D)	✓		

Each day attach to minutes.

STANDING COMMITTEE REPORT

February 20, 19 81

MR. PRESIDENT:

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 253

Respectfully report as follows: That SENATE Bill No. 253

be amended as follows:

1. Page 8.
Following: line 16
Insert: "Section 4. Section 41-3-302, MCA, is amended to read:
"41-3-302. Responsibility of providing protective services. (1) The department of social and rehabilitation services and the county welfare department shall have the primary responsibility to provide the protective services authorized by this chapter and shall have the authority pursuant to this chapter to take temporary, ~~limited,~~ or permanent custody of a child when ordered to do so by the court, including the right to give consent to adoption.""
Renumber: subsequent section

2. Page 10, line 21.
Following: line 21
Insert: "(c) termination of the parent-child legal relationship;"
Reletter: subsequent subsections

And, as so amended,
DO PASS

Mike Anderson
Chairman.

STATE PUB. CO.
Helena, Mont.

MINUTES OF THE MEETING OF THE JUDICIARY COMMITTEE
March 20, 1981

The meeting of the House Judiciary Committee was called to order at 8:00 a.m. in Room 437 of the Capitol by Chairman Kerry Keyser. Rep. Eudaily and Rep. Hannah were excused from the meeting. Jim Lear, Legislative Council, was present.

SENATE BILL 253 SENATOR REGAN, chief sponsor, stated this bill is to amend the laws relating to child abuse/neglect and protective services. This bill eliminates limited custody but leaves intact temporary or permanent custody. Page 1, line 25 is language that defines Child Care Agency. Page 4, line 12 after sexual purposes an "or" should be inserted.

The heart of the bill is subsection (d) on page 4, line 19 concerning the abandonment of the child. Since the enactment of the Child Abuse and Neglect Act several cases have been tried. Case law prevailed, and sections (d) and (e) will govern the case law. Page 6, line 9 deals with supervision authority granted by a youth court concerning the placement of children.

JOHN MUDSEN, SRS, was in support of the bill. As the bill now reads the department is not able to protect children when dealing with child prostitution. Adding the "or" on page 4, line 12 allows the department a lee way to use language in the statute or in the criminal code language. The department cannot get at the child prostitute as a sexual offense without it. As it now stands there is no clear definition on how the department can proceed. At this point it is unclear and unconfidential to go before the judge.

There were no further proponents.

There were no opponents.

SENATOR REGAN closed the bill.

REP. KEEDY asked if a six month waiting period would prevail before a determination of the child's welfare could be made. The answer was yes, a minimum of six months.

REP. KEEDY asked about the legal importance of "harm to a child's health or welfare". MUDSEN replied it is consistent with social service. When the department finds harm done to a child then they take the appropriate action. The department may petition the court for temporary or permanent custody.

SENATOR REGAN stated when a child is abandoned a 90 day period must occur while the department makes an effort to determine the parents. It is determined abandonment after the 90 days.

REP. CURTISS asked if a neighbor would be required under law to report to the SRS cases of abuse or neglect. The Senator replied this has been done. Teachers must report suspected abuse or neglect.

This does not mean the whole state will come down on the parents. There are some avenues provided for the child to be protected.

REP. ANDERSON asked about page 4, line 12. SENATOR REGAN replied that takes it into the criminal code. Section 45-5-625 deals with using a child for pornography purposes.

REP. KEEDY asked what was limited custody. It was replied limited custody is the same as permanent custody.

There was no further discussion on the bill.

SENATE BILL 238 SENATOR STORY, chief sponsor, stated this bill's purpose is to provide court costs and attorney's fees to a successful plaintiff in action involving vehicle ownership. This would permit an individual to obtain attorney fees in fender-benders where there was no personal loss or bodily injury. If the party at fault could not give the individual a satisfactory settlement and the individual prevails at trial, the plaintiff would be able to recover his attorney's fees and costs. Occasionally an individual deals with an insurance company that knows if the individual has $800 worth of damage and the company offers him $400, he will likely accept the money instead of going to court where it will cost him more.

WILLIAM ROMINE, representing the Wrecking Yards, was in support of the bill. EXHIBIT 1. ROMINE stated last session there was a similar bill that needed much work and modification.

If your car is damaged $1,200 to $1,500 the insurance company offers you whatever they want to. Most lawyers will not take the case for $200-$300 and you are still out the money. You are supposed to be made whole by this but it just does not happen. As a general matter, the policy covers only so much. The theory of insurance is to spread the risk of loss. If I am at a stop sign and someone rearends my car, I should be able to have my car fixed and not pay anything. I could sue but I should not be required to go to court to get the money and then have to pay a lawyer. The purpose of the bill is to stop lawsuits and policy holders' dissatisfaction. If this bill will require increased premiums it will be worth it.

There were no further proponents.

PAUL KELLER, American Insurance Association, was opposed to the bill. This will put the adjuster in a position to pay damages that are not fair. The insurance companies hire people that know this. Estimates are received from garages. The insurance companies are required to pay the market value of the car, which is what it should be. If an individual put in a new motor he would want to get paid an increased amount. It is hard to say the car is worth $2,000 when the market value is only $900. It is the

MINUTES OF THE MEETING OF THE JUDICIARY COMMITTEE
March 27, 1981

The meeting of the House Judiciary Committee was called to order at 8:00 a.m. in Room 437 of the Capitol by Chairman Kerry Keyser. All members were present. Jim Lear, Legislative Council, was present.

SENATE BILL 475 SENATOR MAZUREK, sponsor, stated this bill's purpose is to adopt revisions to the Model Business Corporations Act recommended by the American Bar Association. There has been a great deal of work put into this bill. The bill does not have any impact on existing corporations. It does not require existing corporations to change anything or update anything. This only applies to new corporations or existing corporations that are changing. There is no reference or update needed of bylaws.

In 1967 the state passed the Montana Business Corporation Act and within three months it was obsolete. Most Montana corporations are closely held family operations. Sections 25, 29 and 38 codify practices in the state. This deals with transfer of shares and stock. The whole idea is groups of individuals who form a corporation want to have the benefits of a corporation but are restricted on stock. This would help that. Section 29 deals with shareholder control. The bill requires that the shareholder can control the corporation without having to set up a board of directors. The bill allows the board to enter into contracts without having it voted on by all the shareholders.

Par value and share value are done away with. The bill sets up a new standard for dividends. Many of the changes in the bill strike out capital surplus, par value and share value.

RONALD WYSE, University of Montana Law School, was in support of the bill. This bill has been a project of the State Bar for the last three years.

The Montana Business Corporation Act was outdated when it came into effect. The model act was effective January 1, 1969.

Section 16 deals with the board of directors of the corporation. Present law says the board of directors must manage the corporation. This will change it to management shall be exercised under the authority of the board. The second change is a provision in the model act. Shareholders would be able to exercise control where they would not before. Montana law does not have an explicit standard for the board of directors. A director must perform duties in good faith. Subsection 3 allows members of the board to rely on reports from accountants, outside counsel, etc. One of the unfortunate consequences is to get outside people to serve on a board. This is an important change.

came in to ask for an increase of filing.

The amendment failed with BROWN, ANDERSON, CURTISS, MCLANE, KEYSER and SEIFERT voting yes.

REP. CURTISS moved to reconsider the filing fee amendment. The motion failed with CURTISS, DAILY, YARDLEY and TEAGUE voting yes.

The motion of do pass resulted in a roll call vote. Those voting yes were: BENNETT, CONN, EUDAILY, HANNAH, IVERSON, MATSKO, MCLANE, ANDERSON, DAILY, ABRAMS, HUENNEKENS, SHELDEN, KEEDY, TEAGUE and YARDLEY. Those voting no were: BROWN, KEYSER, SEIFERT and CURTISS. The vote was 15 to 4 in favor of do pass. REP. YARDLEY was assigned to carry the bill on the House Floor.

SENATE BILL 479 REP. SEIFERT moved do pass.

REP. KEEDY was against the bill. He stated if existing law needs to be amended it should. This is all new statute.

JIM LEAR stated 70-21-309 is the most recent enactment of this nature. There is nothing in the history that shows an enactment that was not codified. LEAR stated he did not know why it was not amended in favor of creating a new section.

REP. HUENNEKENS stated it was probably technical difficulties. Each year this has been validated rather than going back to the clerk's office.

REP. YARDLEY suggested passing the bill for the day. REP. SEIFERT withdrew his motion. The committee decided to delay action on the bill.

SENATE BILL 253 REP. BROWN moved do pass.

REP. KEEDY felt if an infant was abandoned a waiting period of six months would have to go by before anything could be done with the child. REP. CONN stated no permanent action would take place for six months after the abandonment of the child. REP. KEEDY stated the harm to the child's welfare was that the department would have the authority to take custody and decide the welfare of the child. REP. CONN replied nothing permanent would be decided until six months. Every effort would be given to find the father of the child to give him custody. REP. HUENNEKENS stated this is just a definition establishing the child's health and welfare.

REP. SEIFERT questioned what was wrong with the old language. REP. BROWN stated because case law is based on this it is too vague requiring the six month waiting period. This language

would make it official. REP. HANNAH stated it would be much safer to have the new language rather than the subjective language. If they have protection for the emergency cases we are much better off to have a well defined period of time. There is a major difference in the language and the change. REP. HUENNEKENS agreed that it defines what a child's welfare and health are.

REP. BROWN stated part of the problem is that if existing language in the bill in addition to the new language is left in, in those cases in which they definitely believe parents are not coming back that would allow them to do something, rather than to wait for six months.

REP. BROWN moved to leave the language in adding "or by". The motion carried with REP. HANNAH voting no.

REP. YARDLEY moved to add "or" on page 4, line 12, after "purposes". REP. CURTISS stated if this amendment passes will criminal provisions apply to other sections. REP. YARDLEY replied just 2b. It broadens the basis for harm. Purpose of the "or" might be exploitation that is not in the section. JIM LEAR stated if it is left as it is, it may be leaving open a constitutional attack on an overbroad statute. The committee should either strike the other language or strike the "or".

REP. KEEDY made a substitute motion to strike the underlined language on lines 12 and 13 in subsection 1.

The amendment carried with EUDAILY, MATSKO, and CURTISS voting no.

It was moved do pass as amended by REP. BROWN. The motion carried with CURTISS, HANNAH, IVERSON and MCLANE voting no.

SENATE BILL 479 JIM LEAR stated there is noting wrong with changing the date and reinserting it. It is not necessary to have a new section. If the committee is in favor of the provision, 70-21-309 should be inserted and '73 should be changed to '81.

REP. KEEDY moved to insert "technical" after "any" on line 18, page 1. It is in the title and should be reflected in the bill. The motion carried.

REP. YARDLEY moved to amend the bill inserting 70-21-309 and changing the year to '81. The amendment carried.

REP. KEEDY stated if it goes in in October then we are affecting someone who has a cause of action prior to that date. It if was

HOUSE JUDICIARY 3/27/81

Respectfully report as follows: That SENATE Bill No. 253

BE AMENDED AS FOLLOWS:

1. Page 4, lines 12 and 13.
Following: "purposes~~,~~" on line 12
Strike: remainder of line 12 through "45-5-625" on line 13

2. Page 4, line 22.
Following: "~~future.~~"
Insert: "leaving him under circumstances that make reasonable the belief that the parent or other person does not intend to resume care of the child in the future or by"

SENATE BILL NO. 253

INTRODUCED BY REGAN, TURNAGE

BY REQUEST OF

THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE LAWS RELATING TO CHILD ABUSE AND NEGLECT AND PROTECTIVE SERVICES BY PROVIDING EXPANDED DEFINITIONS AND ADDING DIRECTIVES REGARDING THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES' RESPONSIBILITY FOR CHILD WELFARE SERVICES; AMENDING SECTIONS 41-3-102, 41-3-201, 41-3-302, 41-3-401, AND 53-2-201, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 53-2-201, MCA, is amended to read:

"53-2-201. Powers and duties of department. (1) The department shall:

(a) administer or supervise all forms of public assistance, child protection, and child welfare, including the provision of medical care payments in behalf of recipients of public assistance;

(b) administer or supervise all child welfare activities, including:

(i) importation and exportation of children;

(ii) licensing ~~and supervising of private and local child-caring agencies~~ of all children's foster family homes, group homes, child-care agencies and child-placing agencies;

(iii) the care of dependent, and neglected, ~~and delinquent~~ children in ~~foster family homes, especially~~ substitute care placement and children ~~placed~~ who are free for adoption ~~or those of illegitimate birth~~; and

(iv) the maintenance of supplemental day care for children;

(c) give consultant service to private institutions providing care for the needy, indigent, handicapped, or dependent adults;

(d) cooperate with other state agencies and develop provisions for services to the blind, including the prevention of blindness, the location of blind persons, medical services for eye conditions, and vocational guidance and training of the blind;

(e) provide services in respect to organization and supervise county departments of public welfare and county boards of public welfare in the administation of public assistance functions and for efficiency and economy;

(f) assist and cooperate with other state and federal departments, bureaus, agencies, and institutions, when so requested, by performing services in conformity with public assistance purposes;

(g) administer all state and federal funds allocated

REFERENCE BILL

to the department for public assistance and do all things necessary, in conformity with federal and state law, for the proper fulfillment of public assistance purposes; and

(h) make rules governing payment for services and supplies provided to recipients of public assistance.

(2) The department may:

(a) purchase, exchange, condemn, or receive by gift either real or personal property which is necessary to carry out its public assistance functions. Title to property obtained under this subsection shall be taken in the name of the state of Montana for the use and benefit of the department.

(b) contract with the federal government to carry out its public assistance functions. The department may do all things necessary in order to avail itself of federal aid and assistance.

(c) make rules, consistent with state and federal law, establishing the amount, scope, and duration of services to be provided to recipients of public assistance."

Section 2. Section 41-3-102, MCA, is amended to read:

"41-3-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Child" or "youth" means any person under 18 years of age.

(2) An "abused or neglected child" means a child whose

normal physical or mental health or welfare is harmed or threatened with harm by the acts or omissions of his parent or other person responsible for his welfare.

(3) "Harm to a child's health or welfare" means the harm that occurs whenever the parent or other person responsible for the child's welfare:

(a) inflicts or allows to be inflicted upon the child physical or mental injury, including injuries sustained as a result of excessive corporal punishment;

(b) commits or allows to be committed a sexual assault against the child or exploits the child or allows the child to be exploited for sexual purposes~~; as provided in subsection (1) of 45-5-625~~;

(c) causes failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or health care, though financially able to do so or offered financial or other reasonable means to do so; or

(d) abandons the child by ~~leaving him under circumstances that make reasonable the belief that the parent or other person does not intend to resume care of the child in the future~~. LEAVING HIM UNDER CIRCUMSTANCES THAT MAKE REASONABLE THE BELIEF THAT THE PARENT OR OTHER PERSON DOES NOT INTEND TO RESUME CARE OF THE CHILD IN THE FUTURE OR BY willfully surrendering physical custody for a period of 6

months and during that period does not manifest to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child; or

(e) is unknown and has been unknown for a period of 90 days and reasonable efforts to identify and locate the parents have failed.

(4) "Adequate health care" means any medical or nonmedical remedial health care permitted or authorized under state law.

(5) "Threatened harm" means imminent risk of harm.

(6) "A person responsible for a child's welfare" means the child's parent, guardian, or foster parent; an employee of a public or private residential institution, facility, home, or agency; or any other person legally responsible for the child's welfare in a residential setting.

(7) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily organ or function.

(8) "Mental injury" means an identifiable and substantial impairment of the child's intellectual or psychological functioning.

(9) "Dependent youth" means a youth:

(a) who is abandoned;

(b) who is without parents or guardian or not under

the care and supervision of a suitable adult;

(c) who has no proper guidance to provide for his necessary physical, moral, and emotional well-being;

(d) who is destitute;

(e) who is dependent upon the public for support; or

(f) whose parent or parents have voluntarily relinquished custody of the child and whose legal custody has been transferred to a licensed agency.

(10) "Youth in need of care" means a youth who is dependent, abused, or neglected as defined in this section.

(11) "Supervision" means the authority granted by a youth court or by a voluntary agreement of a parent to determine the foster care placement of a child and the length of stay of a child in foster care and provide for the needs of a child under subsection (1) of 41-3-104.

(12) "Department" means the department of social and rehabilitation services provided for in 2-15-2201."

Section 3. Section 41-3-201, MCA, is amended to read:

"41-3-201. Reports. (1) When the professionals and officials listed in subsection (2) know or have reasonable cause to suspect that a child known to them in their professional or official capacity is an abused or neglected child, they shall report the matter promptly to the department of social and rehabilitation services or its local affiliate, which then shall notify the county attorney

of the county where the child resides.

(2) Professionals and officials required to report are:

(a) physician, resident, intern, or member of a hospital's staff engaged in the admission, examination, care, or treatment of persons;

(b) a nurse, osteopath, chiropractor, podiatrist, medical examiner, coroner, dentist, optometrist, or any other health or mental health professional;

(c) Christian Science practitioner and religious healers;

(d) school teachers, other school officials, and employees who work during regular school hours;

(e) a social worker, operator or employee of any registered or licensed day-care ~~center~~ or substitute care facility, or any other ~~licensed~~ operator or employee of a child-care facility;

(f) foster care, residential, or institutional worker; or

(g) a peace officer or other law enforcement official.

(3) Any person may make a report under this section if he knows or has reasonable cause to suspect that a child is abused or neglected.

(4) No person listed in subsection (2) may refuse to make a report as required in this section on the grounds of

a physician-patient or similar privilege if the person came into possession of such information as a result of his treatment of the child.

(5) The reports referred to under this section shall contain:

(a) the names and addresses of the child and his or her parents or other persons responsible for his or her care;

(b) to the extent known, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries;

(c) any other information that the maker of the report believes might be helpful in establishing the cause of the injuries or showing the willful neglect and the identity of person or persons responsible therefor; and

(d) the facts which led the person reporting to believe that the child has suffered injury or injuries or willful neglect, within the meaning of this chapter."

SECTION 4. SECTION 41-3-302, MCA, IS AMENDED TO READ:

"41-3-302. Responsibility of providing protective services. (1) The department of social and rehabilitation services and the county welfare department shall have the primary responsibility to provide the protective services authorized by this chapter and shall have the authority pursuant to this chapter to take temporary, ~~limited~~, or

permanent custody of a child when ordered to do so by the court, including the right to give consent to adoption.

(2) The county welfare department shall respond to emergency reports of known or suspected child abuse or neglect 24 hours a day, 7 days a week."

Section 5. Section 41-3-401, MCA, is amended to read:

"41-3-401. Abuse, neglect, and dependency petitions. (1) The county attorney shall be responsible for filing all petitions alleging abuse, neglect, or dependency. He may require all state, county, and municipal agencies, including law enforcement agencies, to conduct such investigations and furnish such reports as may be necessary. Investigations as to financial status may not be made prior to the adjudicatory hearing provided for in 41-3-404.

(2) Upon receipt of a petition, the court shall set a date for an adjudicatory hearing on the petition. Such petitions shall be given preference by the court in setting hearing dates.

(3) A petition alleging abuse, neglect, or dependency is a civil action brought in the name of the state of Montana. The rules of civil procedure shall apply except as herein modified. Proceedings under a petition are not a bar to criminal prosecution.

(4) The parents or parent, guardian, or other person or agency having legal custody of the youth named in the

petition, if residing in the state, shall be served personally with a copy of the petition and summons at least 5 days prior to the date set for hearing. If such person or agency resides out of state or is not found within the state, the rules of civil procedure relating to service of process in such cases shall apply.

(5) In the event service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall appoint an attorney to represent the unavailable party where in the opinion of the court the interests of justice require.

(6) If a parent of the child is a minor, notice shall be given to the minor parent's parents or guardian, and if there is no guardian the court shall appoint one.

(7) Any person interested in any cause under this chapter has the right to appear.

(8) Except where the proceeding is instituted or commenced by a representative of the department of social and rehabilitation services, a citation shall be issued and served upon a representative of the department prior to the court hearing.

(9) The petition shall:

(a) state the nature of the alleged abuse, neglect, or dependency;

(b) state the full name, age, and address of the youth

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and the name and address of his parents or guardian or person having legal custody of the youth;

(c) state the names, addresses, and relationship to the youth of all persons who are necessary parties to the action.

(10) The petition may ask for the following relief:

(a) temporary investigative authority and protective services;

(b) temporary legal custody;

~~(c) limited legal custody;~~

(C) TERMINATION OF THE PARENT-CHILD LEGAL RELATIONSHIP;

~~(d)~~(c)(D) permanent legal custody, including the right to consent to adoption;

~~(e)~~(d)(E) appointment of guardian ad litem;

~~(f)~~(e)(F) any combination of the above or such other relief as may be required for the best interest of the youth.

(11) The petition may be modified for different relief at any time within the discretion of the court.

(12) The court may at any time on its own motion or the motion of any party appoint a guardian ad litem for the youth or counsel for any indigent party.

(13) This section does not apply to a petition for temporary investigative authority and protective services."

-End-

April 13, 19 81

FREE CONFERENCE COMMITTEE
ON SENATE BILL NO. 253

(Report No. 1, April 13, 1981)

MR. PRESIDENT AND SPEAKER OF THE HOUSE:

We, your Free Conference Committee on Senate Bill No. 253, met April 13, 1981, and considered:

House Committee on Judiciary Amendments to the third reading copy, dated March 27, 1981, and recommend as follows:

That the Senate accede to Committee amendment nos. 1 and 2;

That Senate Bill No. 253 be further amended as specified in CLERICAL INSTRUCTION no. 1;

That the reference copy of Senate Bill No. 253 read as specified in the CLERICAL INSTRUCTIONS;

And, that the Conference Report to Senate Bill No. 253 be adopted.

CLERICAL INSTRUCTIONS:

1. Page 4, line 12.
Following: "purposes"
Insert: "or commits or allows to be committed the act of sexual abuse of children as defined in subsection (1) of 45-5-625"

FOR THE SENATE:

Bob Brown
B. Brown, Chairman

Tom Hager
Hager

Pat Regan
Regan

FOR THE HOUSE:

R. L. Anderson
Anderson, Chairman

Alison R. Conn
Conn

Yardley
Yardley

Chairman.

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And, as so amended, be concurred in. Report adopted.

TAXATION (Goodover, Chairman):
HB 63, third reading copy, be amended as follows:

1. Page 2, line 5.
Following: "in excess of"
Strike: "$3,600"
Insert: "$360"

2. Page 2, line 7 through line 13.
Following: "system" on line 7
Insert: ";"
Strike: remainder of text through line 13

And, as so amended, be concurred in. Report adopted.

STATE ADMINISTRATION (Story, Chairman):
HJR 51, be concurred in. Report adopted.
HJR 59, be concurred in. Report adopted.
HJR 62, be concurred in. Report adopted.

The Senate will please take note that the President did, at the hour of 4:00 p.m., 4/13/81, sign the following bills:
HB 467, HB 626, HB 790, HJR 48.

Jean A. Turnage
President

REPORTS OF SELECT COMMITTEES

FREE CONFERENCE COMMITTEE
ON SENATE BILL NO. 253
Report No. 1, April 13, 1981

MR. PRESIDENT AND SPEAKER OF THE HOUSE:

We, your Free Conference Committee on Senate Bill No. 253, met April 13, 1981, and considered:

House Committee on Judiciary Amendments to the third reading copy, dated March 27, 1981, and recommend as follows:

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That Senate Bill No. 253 be further amended as specified in CLERICAL INSTRUCTION NO. 1;

That the reference copy of Senate Bill No. 253 read as specified in the CLERICAL INSTRUCTIONS;

And, that the Free Conference Committee Report to Senate Bill No. 253 be adopted.

CLERICAL INSTRUCTIONS:

1. Page 4, line 12.
Following: "purposes"
Insert: "or commits or allows to be committed the act of sexual abuse of children as defined in subsection (1) of 45-5-625"

FOR THE SENATE:

Senator B. Brown, Chairman
Senator Hager

FOR THE HOUSE:

Representative Anderson, Chairman
Representative Conn

Senator Regan Representative Yardley

Report adopted.

CONFERENCE COMMITTEE
ON HOUSE BILL NO. 26
Report No. 1, April 13, 1981

MR. PRESIDENT AND SPEAKER OF THE HOUSE:

We, your Conference Committee on House Bill No. 26, met April 13, 1981, and considered:

Senate Committee on State Administration Amendment to the third reading copy, dated March 20, 1981, and;

Senate Committee of the Whole Amendments to the third reading copy, dated March 23, 1981, and recommend as follows:

That the House accede to Committee Amendment No. 1;

That the Senate recede from Committee of the Whole Amendment Nos. 1 through 18;

That the reference (engrossed) copy of House Bill No. 26 read as specified in the CLERICAL INSTRUCTIONS; and

That the Conference Committee Report to House Bill No. 26 be adopted.

CLERICAL INSTRUCTIONS:

1. Title, line 6.
Following: "~~PRIVATE~~"
Insert: "PRIVATE"

2. Page 1, line 13.
Following: "~~private~~"
Insert: "private"

3. Page 1, line 18.
Following: "~~private~~"
Insert: "private"

4. Page 1, line 23.
Following: "~~private~~"
Insert: "private"

5. Page 2, line 23.
Following: "~~consultant~~"
Insert: "private"

6. Page 2, line 25.
Following: "~~EMPLOYEE~~"
Strike: "INCLUDING OTHER STATE AGENCIES OR EMPLOYEES"
Insert: "other than a state agency or employee"

7. Page 3, line 24.
Following: "~~private~~"
Insert: "private"

8. Page 3, line 25.
Following: "~~private~~"
Insert: "private"

We recommend that:

The House accede to Standing Committee amendments no. 1 through 7.

The House accede to Committee of the Whole amendment no. 1.

House Bill No. 488 be further amended as specified in the clerical instructions.

The Free Conference Committee Report on House Bill No. 488 be adopted.

CLERICAL INSTRUCTIONS:

1. Title, line 11.
Following: line 10
Strike: "ELIMINATE"
Insert: "MODIFY"

2. Title, line 13.
Following: "~~SECTION~~"
Strike: "SECTIONS 80-11-206 AND"
Insert: "SECTION"

3. Title, line 14.
Following: "PROVIDING"
Strike: "AN"

4. Title, line 15.
Following: "EFFECTIVE"
Strike: "DATE"
Insert: "DATES"

5. Page 1, line 18 through line 6 on page 3.
Strike: section 1 in its entirety
Renumber: subsequent sections

6. Page 4, line 5.
Following: "marketing"
Insert: "of alcohol byproducts and"

7. Page 4, line 11.
Following: "Section"
Strike: "2"
Insert: "1"

8. Page 4, line 14.
Following: "section"
Strike: "2"
Insert: "1"

9. Page 4, line 19.
Following: "SECTION"
Strike: "2"
Insert: "1"

FOR THE HOUSE:

Schultz
Ernst
Jacobsen

FOR THE SENATE:

Aklestad
Kolstad
Conover

FREE CONFERENCE COMMITTEE
ON SENATE BILL NO. 253
Report No. 1, April 13, 1981

Mr. President and Speaker of the House:

We, your Free Conference Committee on Senate Bill No. 253, met April 13, 1981, and considered:

House Committee on Judiciary amendments to the third reading copy, dated March 27, 1981.

We recommend that:

The Senate accede to Committee amendments no. 1 and 2.

Senate Bill No. 253 be further amended as specified in the clerical instructions.

The reference copy of Senate Bill No. 253 read as specified in the clerical instructions.

The Free Conference Committee Report on Senate Bill No. 253 be adopted.

CLERICAL INSTRUCTIONS:

1. Page 4, line 12.
Following: "purposes"
Insert: "or commits or allows to be committed the act of sexual abuse of children as defined in subsection (1) of 45-5-625"

FOR THE HOUSE:

Anderson
Conn
Yardley

FOR THE SENATE:

B. Brown
Hager
Regan

MESSAGES FROM THE GOVERNOR

The Honorable Robert Marks
Speaker of the House
Montana House of Representatives
State Capitol
Helena, Montana 59620

April 13, 1981

Dear Mr. Speaker:

This is to inform you that I have signed the following measures this date:

House Bill Nos. 561, 622, 804.

Sincerely,

TED SCHWINDEN
Governor

The Honorable Jean A. Turnage
President of the Senate
State Capitol
Helena, Montana 59620

April 13, 1981

The Honorable Robert L. Marks
Speaker of the House
State Capitol
Helena, Montana 59620

Dear Senator Turnage and Representative Marks:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby return Senate

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SENATE BILL NO. 253

INTRODUCED BY REGAN, TURNAGE

BY REQUEST OF

THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE LAWS RELATING TO CHILD ABUSE AND NEGLECT AND PROTECTIVE SERVICES BY PROVIDING EXPANDED DEFINITIONS AND ADDING DIRECTIVES REGARDING THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES' RESPONSIBILITY FOR CHILD WELFARE SERVICES; AMENDING SECTIONS 41-3-102, 41-3-201, 41-3-302, 41-3-401, AND 53-2-201, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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(b) administer or supervise all child welfare activities, including:

(i) importation and exportation of children;

(ii) licensing ~~and supervising of private and local child caring agencies~~ of all children's foster family homes, group homes, child-care agencies and child-placing agencies;

(iii) the care of dependent, and neglected, ~~and delinquent~~ children in ~~foster family homes, especially~~ substitute care placement and children ~~placed~~ who are free for adoption ~~or those of illegitimate birth~~; and

(iv) the maintenance of supplemental day care for children;

(c) give consultant service to private institutions providing care for the needy, indigent, handicapped, or dependent adults;

(d) cooperate with other state agencies and develop provisions for services to the blind, including the prevention of blindness, the location of blind persons, medical services for eye conditions, and vocational guidance and training of the blind;

(e) provide services in respect to organization and supervise county departments of public welfare and county boards of public welfare in the administation of public assistance functions and for efficiency and economy;

(f) assist and cooperate with other state and federal departments, bureaus, agencies, and institutions, when so requested, by performing services in conformity with public assistance purposes;

(g) administer all state and federal funds allocated

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to the department for public assistance and do all things necessary, in conformity with federal and state law, for the proper fulfillment of public assistance purposes; and

(h) make rules governing payment for services and supplies provided to recipients of public assistance.

(2) The department may:

(a) purchase, exchange, condemn, or receive by gift either real or personal property which is necessary to carry out its public assistance functions. Title to property obtained under this subsection shall be taken in the name of the state of Montana for the use and benefit of the department.

(b) contract with the federal government to carry out its public assistance functions. The department may do all things necessary in order to avail itself of federal aid and assistance.

(c) make rules, consistent with state and federal law, establishing the amount, scope, and duration of services to be provided to recipients of public assistance."

Section 2. Section 41-3-102, MCA, is amended to read:

"41-3-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Child" or "youth" means any person under 18 years of age.

(2) An "abused or neglected child" means a child whose

normal physical or mental health or welfare is harmed or threatened with harm by the acts or omissions of his parent or other person responsible for his welfare.

(3) "Harm to a child's health or welfare" means the harm that occurs whenever the parent or other person responsible for the child's welfare:

(a) inflicts or allows to be inflicted upon the child physical or mental injury, including injuries sustained as a result of excessive corporal punishment;

(b) commits or allows to be committed a sexual assault against the child or exploits the child or allows the child to be exploited for sexual purposes~~; as provided in subsection (1) of 45-5-625~~ OR COMMITS OR ALLOWS TO BE COMMITTED THE ACT OF SEXUAL ABUSE OF CHILDREN AS DEFINED IN SUBSECTION (1) OF 45-5-625;

(c) causes failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or health care, though financially able to do so or offered financial or other reasonable means to do so; or

(d) abandons the child by ~~leaving him under circumstances that make reasonable the belief that the parent or other person does not intend to resume care of the child in the future.~~ LEAVING HIM UNDER CIRCUMSTANCES THAT MAKE REASONABLE THE BELIEF THAT THE PARENT OR OTHER PERSON

DOES NOT INTEND TO RESUME CARE OF THE CHILD IN THE FUTURE OR BY willfully surrendering physical custody for a period of 6 months and during that period does not manifest to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child; or

(e) is unknown and has been unknown for a period of 90 days and reasonable efforts to identify and locate the parents have failed.

(4) "Adequate health care" means any medical or nonmedical remedial health care permitted or authorized under state law.

(5) "Threatened harm" means imminent risk of harm.

(6) "A person responsible for a child's welfare" means the child's parent, guardian, or foster parent; an employee of a public or private residential institution, facility, home, or agency; or any other person legally responsible for the child's welfare in a residential setting.

(7) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily organ or function.

(8) "Mental injury" means an identifiable and substantial impairment of the child's intellectual or psychological functioning.

(9) "Dependent youth" means a youth:

(a) who is abandoned;

(b) who is without parents or guardian or not under the care and supervision of a suitable adult;

(c) who has no proper guidance to provide for his necessary physical, moral, and emotional well-being;

(d) who is destitute;

(e) who is dependent upon the public for support; or

(f) whose parent or parents have voluntarily relinquished custody of the child and whose legal custody has been transferred to a licensed agency.

(10) "Youth in need of care" means a youth who is dependent, abused, or neglected as defined in this section.

(11) "Supervision" means the authority granted by a youth court or by a voluntary agreement of a parent to determine the foster care placement of a child and the length of stay of a child in foster care and provide for the needs of a child under subsection (1) of 41-3-104.

(12) "Department" means the department of social and rehabilitation services provided for in 2-15-2201."

Section 3. Section 41-3-201, MCA, is amended to read:

"41-3-201. Reports. (1) When the professionals and officials listed in subsection (2) know or have reasonable cause to suspect that a child known to them in their professional or official capacity is an abused or neglected child, they shall report the matter promptly to the

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department of social and rehabilitation services or its local affiliate, which then shall notify the county attorney of the county where the child resides.

(2) Professionals and officials required to report are:

(a) physician, resident, intern, or member of a hospital's staff engaged in the admission, examination, care, or treatment of persons;

(b) a nurse, osteopath, chiropractor, podiatrist, medical examiner, coroner, dentist, optometrist, or any other health or mental health professional;

(c) Christian Science practitioner and religious healers;

(d) school teachers, other school officials, and employees who work during regular school hours;

(e) a social worker, operator or employee of any registered or licensed day-care ~~center~~ or substitute care facility, or any other ~~licensed~~ operator or employee of a child-care facility;

(f) foster care, residential, or institutional worker; or

(g) a peace officer or other law enforcement official.

(3) Any person may make a report under this section if he knows or has reasonable cause to suspect that a child is abused or neglected.

(4) No person listed in subsection (2) may refuse to make a report as required in this section on the grounds of a physician-patient or similar privilege if the person came into possession of such information as a result of his treatment of the child.

(5) The reports referred to under this section shall contain:

(a) the names and addresses of the child and his or her parents or other persons responsible for his or her care;

(b) to the extent known, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries;

(c) any other information that the maker of the report believes might be helpful in establishing the cause of the injuries or showing the willful neglect and the identity of person or persons responsible therefor; and

(d) the facts which led the person reporting to believe that the child has suffered injury or injuries or willful neglect, within the meaning of this chapter."

SECTION 4. SECTION 41-3-302, MCA, IS AMENDED TO READ:

"41-3-302. Responsibility of providing protective services. (1) The department of social and rehabilitation services and the county welfare department shall have the primary responsibility to provide the protective services

authorized by this chapter and shall have the authority pursuant to this chapter to take temporary, ~~limited~~, or permanent custody of a child when ordered to do so by the court, including the right to give consent to adoption.

(2) The county welfare department shall respond to emergency reports of known or suspected child abuse or neglect 24 hours a day, 7 days a week."

Section 5. Section 41-3-401, MCA, is amended to read:

"41-3-401. Abuse, neglect, and dependency petitions. (1) The county attorney shall be responsible for filing all petitions alleging abuse, neglect, or dependency. He may require all state, county, and municipal agencies, including law enforcement agencies, to conduct such investigations and furnish such reports as may be necessary. Investigations as to financial status may not be made prior to the adjudicatory hearing provided for in 41-3-404.

(2) Upon receipt of a petition, the court shall set a date for an adjudicatory hearing on the petition. Such petitions shall be given preference by the court in setting hearing dates.

(3) A petition alleging abuse, neglect, or dependency is a civil action brought in the name of the state of Montana. The rules of civil procedure shall apply except as herein modified. Proceedings under a petition are not a bar to criminal prosecution.

(4) The parents or parent, guardian, or other person or agency having legal custody of the youth named in the petition, if residing in the state, shall be served personally with a copy of the petition and summons at least 5 days prior to the date set for hearing. If such person or agency resides out of state or is not found within the state, the rules of civil procedure relating to service of process in such cases shall apply.

(5) In the event service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall appoint an attorney to represent the unavailable party where in the opinion of the court the interests of justice require.

(6) If a parent of the child is a minor, notice shall be given to the minor parent's parents or guardian, and if there is no guardian the court shall appoint one.

(7) Any person interested in any cause under this chapter has the right to appear.

(8) Except where the proceeding is instituted or commenced by a representative of the department of social and rehabilitation services, a citation shall be issued and served upon a representative of the department prior to the court hearing.

(9) The petition shall:

(a) state the nature of the alleged abuse, neglect, or

dependency;

(b) state the full name, age, and address of the youth and the name and address of his parents or guardian or person having legal custody of the youth;

(c) state the names, addresses, and relationship to the youth of all persons who are necessary parties to the action.

(10) The petition may ask for the following relief:

(a) temporary investigative authority and protective services;

(b) temporary legal custody;

~~(c)--limited-legal-custody~~

(C) TERMINATION OF THE PARENT-CHILD LEGAL RELATIONSHIP;

~~(d)~~(D) permanent legal custody, including the right to consent to adoption;

~~(e)~~(E) appointment of guardian ad litem;

~~(f)~~(F) any combination of the above or such other relief as may be required for the best interest of the youth.

(11) The petition may be modified for different relief at any time within the discretion of the court.

(12) The court may at any time on its own motion or the motion of any party appoint a guardian ad litem for the youth or counsel for any indigent party.

(13) This section does not apply to a petition for temporary investigative authority and protective services."

-End-